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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TED LOURENCO, *Individually and On
Behalf of All Others Similarly Situated,*

Plaintiff,

v.

AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES
LLC, AMERIPRISE FINANCIAL
SERVICES, INC., and AMERICAN
ENTERPRISE INVESTMENT
SERVICES, INC.,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Ted Lourenco (“Plaintiff”), on behalf of himself and all others similarly situated, brings this action as a class action against defendants Ameriprise Financial, Inc. (“Ameriprise”); Ameriprise Financial Services, LLC (“AFS LLC”); Ameriprise Financial Services, Inc. (“AFS Inc.”); American Enterprise Investment Services (“AEIS”), and Ameriprise Trust Company (“Ameriprise Trust”) (collectively “Defendants”).

INTRODUCTION

1. A cash sweep account is a type of bank or brokerage account that is linked to an investment account and automatically transfers funds when the balance is above or below a preset minimum. Typically, this is used to sweep excess cash into a money market fund, where it will earn more interest than an ordinary bank account. This case arises from Defendants’ exploitative and unfair implementation of the Ameriprise Insured Money Market Account (“AIMMA”) and the Ameriprise Bank Insured Sweep Account (“ABISA”) (collectively, “Ameriprise Sweep Program” or “Program”), resulting in the breach of Defendants’ fiduciary duties owed to Plaintiff and similarly situated retirement account investors as their investment advisors.

2. Specifically, when acting as their customers’ agents and fiduciaries, Defendants “sweep” uninvested cash balances in its customers’ accounts and usually deposits that cash into accounts located at its affiliated bank, Ameriprise Bank, FSB

1 (“the Bank”). Because the Bank’s accounts pay far below market rates of interest,
2 Plaintiff and other Class members have lost significant amounts of interest they
3 would have otherwise earned had Defendants swept their uninvested cash into bank
4 accounts that pay a market interest rate.
5

6 3. In its agreement with its customers, Defendants specifically
7 acknowledge that they act as their customers’ agents.
8

9 4. From 2018 through March 2019, and again from March 2022 onwards,
10 when the Federal Reserve began raising the target federal funds rate, the reasonable
11 value of swept cash consistently exceeded the amounts paid by Defendants on sweep
12 accounts by an order of magnitude. Comparable brokerages such as Fidelity
13 Investments, R.W. Baird, Robinhood, and Vanguard Investments, which did not
14 sweep cash to affiliated banks, but rather swept cash to independent, unaffiliated
15 banks, paid substantially higher rates on swept cash, than Defendants paid. For
16 example, Fidelity paid retirement investors as much as 2.72% APY on swept cash
17 regardless of AUM, starting in August 2023, and R.W. Baird paid retirement
18 investors between 2.07% to 4.15% on swept cash, depending on cash balances, as of
19 September 8, 2023. By contrast, Plaintiff only received a 0.28% interest rate on his
20 cash in the AIMMA in 2022.
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25 5. Other metrics, including the federal funds rate, and rates paid by online
26 banks, and government money market funds, further evidence that the paltry rates
27 paid by Defendants on retirement sweep accounts were not reasonable.
28

1 6. Ameriprise breached its fiduciary duties when it placed its customers’
2 cash in low interest-bearing accounts held by its own affiliates and then pocketed
3 the unpaid interest as additional profit.
4

5 7. Defendants failed to adequately disclose to their customers that, as to
6 the Program, they are essentially providing a kickback to its own affiliates at its
7 customers’ expense. Specifically, Defendants shortchanged their customers for their
8 and their affiliates’ benefit by negotiating with the Bank one-sided transactions that
9 swept cash into exceedingly low-interest accounts. Defendants failed to disclose
10 and discuss these conflicted transactions, much less obtain informed consent from
11 its customers and principals.
12

13 8. Plaintiff brings this action individually and on behalf of a Class of
14 similarly situated individuals for breach of fiduciary duty, breach of contract, breach
15 of the implied covenant of good faith and fair dealing, unjust enrichment and, as to
16 the California Sub-Class, violation of California’s Unfair Competition Law
17 (“UCL”), to recover damages arising out of Defendants’ violations of the law, and
18 for such other relief as the Court may deem just and proper.
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22 **JURISDICTION AND VENUE**

23 9. This Court has original jurisdiction over the subject matter of this
24 action under 28 U.S.C. §1332(d)(2), as this action is brought as a class action on
25 behalf of class members, one or more members of the class are citizens of a state
26 different than the Defendants, and the amount in controversy exceeds five million
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1 dollars (\$5,000,000), exclusive of interest and costs.

2 10. The Court has personal jurisdiction over Defendants because they
3 regularly transact business in California and intentionally avail themselves of the
4 markets within California through the promotion, sale, and marketing of their services.
5 Thus, Defendants have minimum contacts in California and in this District, rendering
6 the exercise of jurisdiction by this Court proper and necessary.
7

8 11. Venue is proper under 28 U.S.C. § 1391 because among other things
9 a substantial part of the events, omissions, and/or relevant conduct by Defendants
10 giving rise to Plaintiff's claims occurred in this District (where Plaintiff resides and
11 conducted business with Defendants).
12

13 **PARTIES**

14 **a. Plaintiff**

15 12. Plaintiff Ted Lourenco is a customer of Defendants and is a resident and
16 citizen of California. Plaintiff maintained a Rollover IRA Plan and a Roth IRA Plan
17 in a brokerage account in which cash was held over the course of the life of the
18 account. Defendants assigned a personal advisor to Plaintiff concerning his brokerage
19 account. While Plaintiff was a customer of Defendants, the cash held in his account
20 was automatically "swept" into a low interest-bearing bank account pursuant to the
21 Program.
22

23 **B. Defendants**

24 13. Defendant Ameriprise Financial, Inc. is headquartered in Minneapolis,
25 Minnesota and incorporated in Delaware. It is ranked 245th on the Fortune 500.
26
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1 Through its subsidiaries, Ameriprise Financial, Inc. provides financial planning
2 products and services in the United States, including wealth and asset management,
3 among other things.

4
5 14. Defendant Ameriprise Financial Services, LLC, a subsidiary of
6 Ameriprise Financial, is headquartered in Minneapolis, Minnesota and is a Delaware
7 limited liability company. It is both a registered broker-dealer and investment
8 adviser.

9
10 15. Defendant Ameriprise Financial Services, Inc., a subsidiary of
11 Ameriprise Financial, Inc., is headquartered in Minneapolis, Minnesota and is
12 incorporated in Delaware. It is both a registered broker dealer and investment
13 adviser.

14
15 16. Defendant American Enterprise Investment Services, Inc., a
16 subsidiary of Ameriprise Financial, Inc., is also headquartered in Minneapolis,
17 Minnesota and is incorporated in Delaware.

18 **FACTUAL BACKGROUND**

19 **A. Defendants' Customer Relationship and Contractual Duties**

20
21 17. The relationship between Defendants and their customers, including
22 Plaintiff, is set forth in Ameriprise's Ameriprise Brokerage Client Agreement
23 ("Brokerage Agreement"). The Brokerage Agreement incorporates the "Other
24 Important Brokerage Disclosures" Agreement ("Disclosures"), among other
25 documents.
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1 18. The Disclosures state that Defendants act as customers' agent in
2 operating the Program. As to the AIMMA, the Disclosures state, "AEIS will open
3 Deposit Accounts as your agent[,]" and, "as your agent, will establish the Deposit
4 Accounts for you at each bank and make deposits to and withdrawals from the
5 Deposit Accounts." Similarly, as to the ABISA, the Disclosures state that "AEIS, as
6 your agent, will establish the Deposit Account for you at Ameriprise Bank and make
7 deposits to and withdrawals from the Deposit Account as described herein."
8
9

10 19. By entering a custodial and agency relationship with Plaintiff and
11 members of the putative Class, Defendants assumed fiduciary duties including the
12 duty of loyalty, the duty of care, the duty to act in good faith, the duty of full and fair
13 disclosures, and the duty to make prudent investment recommendations. These
14 fiduciary duties are meant to always ensure Defendants act with integrity and in the
15 best interests of the client.
16

17 20. Defendant's fiduciary duties to as broker-dealers are described in
18 Regulation Best Interest (Reg. BI) under the Securities Exchange Act of 1934, which
19 requires them to act in the best interests of the retail customer at the time a
20 recommendation is made. Reg. BI applies to retail investors, i.e., natural persons, or
21 their legal representatives, who receive recommendations primarily for personal,
22 family, or household purposes. 17 C.F.R. § 240.15l-1(b)(1).
23
24

25 21. Reg. BI obligates broker-dealers, when making an investment
26 recommendation, to meet four core obligations: *Disclosure* (providing certain
27 prescribed disclosure before or at the time of recommendation, about the
28

1 recommendation and the relationship between the retail customer and the broker-
 2 dealer); *Care* (exercising reasonable diligence, care, and skill in making the
 3 recommendation); *Conflicts of Interest* (establishing, maintaining, and enforcing
 4 policies and procedures reasonably designed to address conflicts of interest); and
 5 *Compliance* (establishing, maintaining, and enforcing policies and procedures
 6 reasonably designed to achieve compliance with Reg BI).

8
 9 22. The Disclosures include an Appendix containing Defendants’
 10 “Regulations Best Interest Disclosure.” Thus, Defendants acknowledge that they are
 11 bound by these obligations.

12 23. Defendants’ fiduciary duties are also reflected in their Code of
 13 Conduct. See [http://q4live.s25.clientfiles.s3-website-us-east-1.amazonaws.com/634255556/files/doc_downloads/irw/governance/codes-of-](http://q4live.s25.clientfiles.s3-website-us-east-1.amazonaws.com/634255556/files/doc_downloads/irw/governance/codes-of-conduct/Ameriprise-Financial-Global-Code-of-Conduct.pdf)
 14 [conduct/Ameriprise-Financial-Global-Code-of-Conduct.pdf](http://q4live.s25.clientfiles.s3-website-us-east-1.amazonaws.com/634255556/files/doc_downloads/irw/governance/codes-of-conduct/Ameriprise-Financial-Global-Code-of-Conduct.pdf).

15
 16
 17 24. As its customers’ agent and pursuant to its contractual obligations,
 18 Defendants are required to act in their best interests and not put their own personal
 19 gain ahead of their clients.

21 **B. Defendants’ Cash Sweep Program**

22
 23 25. A “sweep program” is a “service provided by a broker or dealer where
 24 it offers to its customer the option to automatically transfer free credit balances in
 25 the securities account of the customer to either a money market mutual fund product
 26 as described in § 270.2a-7 or an account at a bank whose deposits are insured by the
 27 Federal Deposit Insurance Corporation.” See 17 CFR 240.15c3-3(a)(17).
 28

1 26. Sweep deposits play a pivotal role as a capital source for banks,
2 empowering them to utilize these deposits for various corporate purposes. This
3 includes activities such as making loans or investing in government securities. The
4 disparity between the interest rate paid and the interest rate earned by a bank on those
5 deposits is commonly referred to as the net interest margin (“NIM”). *See also*
6 Disclosures (“Ameriprise Bank, like unaffiliated banks, uses the deposits it receives
7 through its participation in AIMMA for its lending and investment programs, and it
8 earns revenue based on the difference (or ‘spread’) between the interest rate it
9 receives from its investment and lending programs and what it pays to obtain the
10 deposits.”).

13 27. Profits earned by brokerage firms from their sweep programs are
14 based on their agreements with the affiliated bank which generally provide
15 compensation based on the average daily deposits at the affiliated bank, with total
16 compensation generally based on the Federal Funds rate plus basis points.

18 28. During the COVID-19 pandemic, the Federal Funds rate (an interest
19 rate set by the Federal Open Market Committee which banks use to lend each other
20 money) was so low that the earned interest on cash sweep would be very low. Before
21 and after the pandemic, however, the Federal Funds rate was substantially higher.
22 For example, from 2022 to 2024, the Federal Funds rate rose from an average yield
23 of 1.68% in 2022 to 5.03% in 2023 to 5.44% in 2024.

26 29. When the Federal Fund rate rose beginning in 2022, banks increased
27 yields and so brokerages should have been able to negotiate higher rates of return on
28

1 uninvested cash from affiliated banks. Unfortunately, that has not been the case with
2 some firms such as Defendants. Instead, Ameriprise places sweep deposits with
3 affiliated banks that it negotiates with to pay less than reasonable interest rates to
4 customers and more money for itself.

5
6 30. The deposit accounts in the Ameriprise Sweep Program have very low
7 rates of return. Throughout 2022 and at least through April 2023, the interest rates
8 paid to customers with cash sweep deposits were paltry: from .0% to approximately
9 .30%.

10
11 31. The SEC, in its Staff Bulletin: Standards of Conduct for Broker-
12 Dealers and Investment Advisers Conflicts of Interest, issued August 3, 2022,
13 emphasized that “cash sweep programs” are a “common source[] of conflicts of
14 interest.” See <https://www.sec.gov/tm/iabd-staff-bulletin-conflicts-interest>.

15
16 32. By default, Ameriprise primarily assigns its customers to one of two
17 different cash sweep programs based on the type of account the customer has. The
18 first program is the “AIMMA” for balances up to \$2.5 million (or \$5 million for
19 joint accounts). The second program is the ABISA for balances up to \$250,000. All
20 non-qualified accounts and qualified IRA accounts are enrolled automatically in
21 AIMMA, while certain qualified, discretionary accounts are automatically enrolled
22 in ABISA.

23
24
25 33. Under the Program, uninvested cash balances will automatically
26 sweep daily into interest bearing deposit accounts set by Defendants following the
27 day of deposit and with the banks selected by Defendants. According to the
28

1 Brokerage Agreement, the Bank—a corporate affiliate of Ameriprise—is an option
2 for cash swept into an AIMMA, and the exclusive option for cash swept into an
3 ABISA.

4
5 34. As to AIMMA, the Disclosures state:

6 Interest rates on the Deposit Accounts will be tiered based on the cash
7 balances in individual accounts (‘Interest Rate Tiers’) We reserve
8 the right to change the methodology used to determine the interest rates
9 in our sole discretion and without prior notice to you. The rate is
10 generally based on a variety of factors including, but not limited to,
11 prevailing economic and market conditions.

12
13 35. As to ABISA, the Disclosures state:

14 Interest rates on the Deposit Accounts are tiered and will vary based
15 upon your account cash balance as well as prevailing economic and
16 business conditions. You may contact your Ameriprise financial
17 advisor or access our website at ameriprise.com/sweepstakes to view the
18 current interest rates for each Interest Rate Tier. If you do not have an
19 Ameriprise financial advisor or access to the internet, a copy of this
20 information may be obtained by contacting an Ameriprise Financial
21 client service representative at 800.862.7919. Under ordinary business
22 conditions, changes to the interest rates will be posted at
23 Ameriprise.com/sweepstakes three to five business days prior to their
24 effective date.

25 36. Ameriprise’s Roth IRA Disclosure statement and custodial agreement
26 (“Roth Agreement”) states: “Dividends and interest received in a brokerage account
27 maintained with American Enterprise Investment Services for the benefit of the
28 Depositor’s Account hereunder *will be transferred daily* into a trade settlement
account established by the Custodian for the Account.” (Emphasis added).

37. Defendants acknowledge that the arrangement with the Bank is a
conflict of interest that must be disclosed. For example, Defendants admit that, as to

1 cash swept into AIMMA, “The deposit amounts to be placed at each bank,
2 established by Ameriprise Bank and IntraFi may result in Ameriprise Bank securing
3 a higher position in the Bank List and thus receive higher deposits than other
4 Program Banks.”

5
6 38. Pursuant to the Brokerage Agreement and the Disclosures, Defendants
7 as their customers’ agent and exercise discretion with respect to the Program.

8
9 39. Defendants exercised this discretion in bad faith to the detriment of
10 their customers.

11
12 40. The Program primarily benefited Defendants at the expense of their
13 customers.

14
15 41. When sweeping cash into ABISA, Defendants directed all accounts
16 participating in the Program to its affiliate Bank. When sweeping cash into AIMMA,
17 Defendants directed all accounts participating in the Program, including Plaintiff’s,
18 to both its affiliate Bank and non-affiliated Banks; however, Defendants also
19 disclose that its affiliated Bank is the preferred bank for AIMMAs and, upon
20 information and belief, the affiliated Bank is almost always used for the first
21 \$250,000 in cash in an AIMMA.

22
23 42. Defendants enter transactions by which it establishes and pays
24 unreasonably low interest rates to its customers in the Program. In contrast to the
25 unreasonably low returns Defendants pays their customers, Defendants shifts to their
26 affiliate the Bank a substantial portion of the beneficial returns on its customers’
27 cash that would otherwise constitute its customary compensation in connection with
28

1 the Program.

2 43. Defendants admit that by keeping the interest rates in Plaintiff and
3 Class members' Deposit Accounts lower, it earns a higher profit.

4 44. Through their operation of the Program, Defendants engage in self-
5 dealing, creating a profit center that benefits only them, to the financial detriment of
6 their customers.
7

8
9 **C. Defendants' Disclosures to Its Customers Regarding the Program**
10 **Contained Material Misrepresentations and Omissions**

11 45. Defendants' disclosures contain material misrepresentations and
12 omissions regarding the Program.

13 46. The Disclosures state that "[t]he interest rates paid with respect to the
14 Deposit Accounts at a bank may be higher or lower than the interest ra available to
15 depositors making deposits directly with the bank, with other depository institutions
16 in comparable accounts, or in other available money settlement options made
17 available through AEIS." This statement is misleading because, as Defendants knew
18 at the time its customers entered the Program, the interest rate on the cash sweep
19 deposit account *will* be lower than yields on essentially any other available cash
20 alternative.
21
22

23 47. Defendants never disclose the interest rates that their Deposit
24 Accounts could have earned if their customers' sweep funds had been invested in
25 comparable accounts with non-affiliated banks. This is a material omission of facts
26 that customers would have found important in decided whether to use Defendants as
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1 their investment advisor.

2 48. Defendants' disclosures contained additional misrepresentations and
3 omissions of material facts about the Bank's role in the Program. For example,
4 according to the Disclosures, "We reserve the right to change the methodology used
5 to determine the interest rates in our sole discretion and without prior notice to you.
6 The rate is generally based on a variety of factors including, but not limited to,
7 prevailing economic and market conditions." These disclosures are misleading by
8 claiming that the interest rates paid to customers is a function of economic and
9 market conditions. In fact, the interest rates on the Program are significantly below
10 market rates and are not reasonably tied to any economic or market condition.
11
12

13 **D. Defendants Know the Program Must Provide a Reasonable Rate of**
14 **Interest.**

15 49. Defendants knew or should have known that it has a duty to offer
16 retirement accounts investors a reasonable rate of interest. This knowledge flows not
17 only from the fiduciary duties discussed above, but also from additional duties
18 imposed on Defendants by law.
19
20

21 50. For example, Ameriprise's Roth IRA Disclosure statement and
22 custodial agreement ("Roth Agreement") states that Defendants must not engage in
23 "a prohibited transaction under Section 4975" because it could result in the loss of
24 the IRA-Roth's tax-favored status. The Roth Agreement further acknowledges that
25 a prohibited transaction includes any or indirect "lending of money or other
26 extension of credit between a disqualified person and the Roth IRA," among others.
27
28

1 51. The requirement to pay a reasonable rate of interest derives from the
2 Internal Revenue Code (“IRC”). Section 4975 of the IRC (entitled “Tax on
3 Prohibited Transactions”), applies to IRAs generally, including Plaintiff’s IRA. *See*
4 26 U.S.C. §4975(e)(1)(B) (defining “plan” to include “an individual retirement
5 account described in [IRC] Section 408(a)”). IRC § 4975(c)(1)(B) defines as a
6 “prohibited transaction” the “lending of money or other extension of credit between
7 a plan [i.e., an individual IRA] and a disqualified person.” A “disqualified person,”
8 under Section 4975(e)(2) includes, among others, “a fiduciary” and “a person
9 providing services to the plan.”
10
11

12 52. Defendants and the Bank are “disqualified person[s]” under Section
13 4975(e)(2) and, therefore, the sweep agreement for retirement accounts between
14 Plaintiff and Defendants are “prohibited transaction[s]” under § 4975(c)(1)(B).
15
16

17 53. IRC § 4975(d)(4) provides several “exemptions,” or safe harbors, for
18 otherwise “prohibited transactions,” one of which is “the investment of all or part of
19 a plan’s assets in deposits *which bear a reasonable interest rate* in a bank or similar
20 financial institution.” (Emphasis added).
21

22 54. Section 4975 recognizes that related party transactions into which
23 customers are defaulted (such as Defendants’ Program) can offer interest rates that
24 may become unfairly lowered due to inherent conflicts of interest. Accordingly,
25 conflicted transactions such as affiliated entity cash sweeps are required to pay a
26 reasonable rate of interest. Retirement account customers are particularly vulnerable
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28

1 to receiving inadequate compensation for the use of uninvested cash in their
2 accounts. IRC Section 4975 thus seeks to ensure related party transactions involving
3 retirement accounts are priced at fair market rates.

4
5 55. Regulations promulgated by the Department of the Treasury confirm
6 that the cash swept to the Bank is a “prohibited transaction” but would be permissible
7 (i.e., be within the exemption or safe harbor) if it paid “a reasonable rate of interest.”
8
9 Thus, Treasury regulations state that “Section 4975(d)(4) exempts from the excise
10 taxes imposed by section 4975 investment of all or a part of a plan’s assets in
11 deposits bearing a reasonable rate of interest in a bank or similar financial
12 institution..., even though such bank or similar financial institution is a fiduciary or
13 other disqualified person with respect to the plan.” 26 C.F.R. § 54.4975-6(b)(1).
14

15
16 56. Treasury regulations also mandate that when a financial institution
17 “invests plan assets in deposits in itself or its affiliates under an authorization
18 contained in a plan or trust instrument,” the authorization “must name” the
19 institution and “must state that [it] ... may make investments in deposits which bear
20 a reasonable rate of interest in itself (or in an affiliate).” *Id.* § 54.4975-6(b)(3).
21

22 57. Similarly, ERISA Section 408(b)(1) exempts from prohibition various
23 interested party transactions that “bear a reasonable rate of interest,” among other
24 requirements. *See* 29 U.S.C. §1108(b)(1).
25

26 58. Additionally, FINRA Rule 2122 expressly provides that “[c]harges, if
27 any, for services performed . . . shall be reasonable and not unfairly discriminatory
28

1 among customers.”

2 59. Ameriprise is a member of the American Banker’s Association. A
3 March 15, 2017 letter to the Department of Labor from the American Bankers
4 Association, states that with respect to the investment of IRA assets into “one or
5 more bank deposit products, ... banks have routinely relied on the statutory
6 exemption [for prohibited transactions] available for bank deposit product programs
7 under Section 4975(d)(4) of the Code....” In support of this contention, the ABA
8 attached a white paper from Morgan, Lewis & Bockius LLP, which (at 4)
9 specifically notes that a bank may “invest an IRA’s assets in its own deposit
10 accounts” “which bear a reasonable interest rate” pursuant to the exemption “found
11 in Section 4975(d)(4) of the Code and Section 408(b)(4) of ERISA.” This
12 correspondence constitutes further evidence of Defendants’ recognition that their
13 sweep programs constitute conflicted, presumptively prohibited transactions that are
14 only permitted if depositors are receiving a “reasonable” rate of interest.
15

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19 **E. Defendants Placed Class Members’ Cash in Shockingly Low Interest-**
20 **Bearing Accounts at Its Affiliated Bank**

21 60. Defendants breached their fiduciary and contractual duties by failing
22 to negotiate higher and reasonable interest rates for its customers’ uninvested cash
23 in operating the Program.
24

25 61. As its customers’ agent and financial advisor, Defendants are
26 contractually and legally obligated to act in the best interest of their clients.
27 Defendants’ practice of extracting excessive fees from its customers’ cash sweep
28

1 deposits, through the negotiation of unreasonably low interest rates with affiliated
2 banks, was against its customers' interests.

3 62. Defendants did not negotiate higher and reasonable rates of interest
4 for its customers' cash sweep deposits, but instead worked in consultation with their
5 affiliated bank partners to set artificially and unreasonably low interest rates for
6 deposit accounts in the Program.
7

8 63. Defendants' low interest rates are not reasonable. Section 4975 and
9 ERISA Section 408 place the burden of demonstrating reasonableness on the
10 financial institution. Defendants cannot meet this burden because the interest rates
11 they used in the Program do not meet any definition of a reasonable rate.
12

13 64. Based on its ordinary meaning (using Webster's and Oxford dictionary
14 definitions), "reasonable" is synonymous with "fair." Accordingly, "reasonable" in
15 the valuation context is synonymous with "fair market value" and can be determined
16 using a market approach of comparable instruments. A reasonable rate of interest is
17 the rate that would result in a competitive market under fair market conditions – in
18 other words, an interest rate parties would agree to in an arm's length transaction
19 where neither party is about exert market power over the other.
20

21 65. Fair market value is defined by the IRS as: "the price at which the
22 property would change hands between a willing buyer and a willing seller, neither
23 being under any compulsion to buy or to sell and both having reasonable knowledge
24 of relevant facts." 26 C.F.R. § 25.2512-1.
25
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1 66. IRS regulations define an “arm’s-length interest rate” for purposes of
2 assessing transfer pricing between related entities as

3 a rate of interest which was charged, or would have been charged, at
4 the time the indebtedness arose, in independent transactions with or
5 between unrelated parties under similar circumstances. All relevant
6 factors shall be considered, including the principal amount and duration
7 of the loan, the security involved, the credit standing of the borrower,
8 and the interest rate prevailing at the situs of the lender or creditor for
9 comparable loans between unrelated parties. [26 CFR §1.482-2(a)(2)].

10 67. Consistent with the plain meaning of reasonableness, which means
11 fair, a reasonable rate pursuant to IRC § 4975 (and as acknowledged by Defendants
12 in some of their agreements) is one that considers other market rates for similar
13 products in arm’s-length transactions.

14 68. For example, the Department of Labor, which maintains enforcement
15 authority with respect to the prohibited transaction rules in the IRC, provided in
16 granting the exemption, a definition of “reasonable rate” that considered a broad
17 range of similar products to bank deposit accounts:
18

19 A “reasonable” rate of interest means a rate of interest determinable by
20 reference to short-term rates available to other customers of the bank,
21 those offered by other banks, those available from money market funds,
22 those applicable to short-term instruments such as repurchase
23 agreements, or by reference to a benchmark such as sovereign short
24 term debt (e.g., in the U.S., treasury bills), all in the jurisdiction where
the rate is being evaluated.

25 69. Three-month treasury bills, an instrument the Department of Labor has
26 advised should be considered in determining a reasonable interest rate, rose in yield
27 from 0.046% as of January 1, 2022 to 5.394% as of January 9, 2024. Nevertheless,
28

1 Defendants paid interest rates during this period that were a tiny fraction of these
2 rates.

3 70. Compared to its competitors, the Program's interest rates are
4 substantially lower than similar sweep products offered by other financial
5 institutions. For example, Vanguard offered interest payments of 4.5% in its Cash
6 Sweep Program; Moo Moo offered 5.1% in its Cash Sweep Program; Fidelity
7 offered 5%; Webull offered 5.0%; and Interactive Brokers offered 4.83%.
8
9

10 71. Other brokerages that swept cash to unaffiliated banks set rates
11 between brokerages and banks resulting from something that more closely resembles
12 arm's-length negotiations. For example, Fidelity Investments and R.W. Baird do not
13 sweep cash to affiliated banks, and have consistently paid substantially higher rates
14 of interest than Defendants and other brokerages that sweep cash to affiliated banks.
15
16

17 72. At year-end 2022, Fidelity paid 2.21% interest on cash balances
18 regardless of tier, and R.W. Baird paid between 1.58% interest (on cash balances up
19 to \$1 million) and 3.08% interest (on cash balances above \$5 million). By contrast,
20 Defendants have been paying interest rates as low as 0.01%—virtually nothing.
21

22 73. The federal funds target rate continued to increase in 2023 hitting an
23 effective yield of 5.33% on July 27, 2023. As the federal fund rate increased, so too
24 did Fidelity and R.W. Baird continue to increase the rates they paid on swept cash.
25 Defendants, by contrast, continued to pay close to no interest.
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1 74. On August 7, 2019, Fidelity issued a press releases announcing that “it
2 has challenged conventional industry practices by automatically directing investors’
3 cash into higher yielding options available for brokerage and retirement accounts as
4 well as providing product choice – all without any minimum requirements.” It
5 continued, “Recent customer research shows that many investors don’t focus on the
6 rate paid on their cash when they open an account and, too often, they don’t take
7 action later. Fidelity has made it easy for customers by automatically giving them
8 the higher yielding option at account opening, while also providing other investment
9 options for those customers who prefer it.” And, it noted that Fidelity’s approach
10 ““is contrary to typical industry practices of defaulting customers’ cash into a low-
11 yielding product – often at an affiliated bank – with no other option in what the
12 industry calls a ‘cash sweep.’”

13
14
15
16
17 75. The rates set by Fidelity and R.W. Baird at arm’s-length are evidence
18 of the fair market or reasonable rates based on business and economic conditions.
19 The rates set by Defendants, by default, in self-interested transactions, are not
20 reasonable.
21

22 76. Even when measured against other brokerages who use sweep
23 accounts, Defendants are near the bottom when it comes to interest rates on sweep
24 accounts.
25

26 77. By negotiating significantly lower rates for the cash sweep programs
27 in which it automatically placed Plaintiff and Class members, Defendants did not act
28

1 in their customers' best interests. Instead, Defendants put their own interests above
2 theirs, making substantial net income revenue at its customers' expense. In so doing,
3 Defendants breached their fiduciary duties, including their own Code of Conduct.
4

5 **E. Plaintiff's Experience**

6 78. Plaintiff had an IRA-Roth investment account with Ameriprise for
7 several years. Plaintiff was enrolled automatically in the Program, and so for years
8 his uninvested cash was automatically swept into the affiliated banks Defendants
9 selected in its discretion, with rates that were not reasonable.
10

11 **CLASS ACTION ALLEGATIONS**

12
13 79. Plaintiff re-alleges and incorporates by reference the allegations set
14 forth above.

15 80. Plaintiff brings this action individually and as a class action pursuant to
16 Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf
17 of the Class consisting of:
18

19 **Nationwide Class**

20
21 All persons who had cash deposits or balances in retirements accounts
22 custodied by Defendants and whose cash was placed into an Ameriprise
23 Insured Money Market Account or Ameriprise Bank Insured Sweep
Account.

24 **California Sub-Class**

25
26 All California residents who had cash deposits or balances in
27 retirements accounts custodied by Defendants and whose cash was
28 placed into an Ameriprise Insured Money Market Account or
Ameriprise Bank Insured Sweep Account.

1 81. This action has been brought and may be maintained as a class action
2 under Federal Rule of Civil Procedure 23.

3 **A. Numerosity - Rule 23(a)(1)**

4 82. Class and Sub-Class members are so numerous that their individual
5 joinder is impracticable. The precise number of Class members and their
6 identities are unknown to Plaintiff currently. However, Ameriprise has more
7 than two million individual, business, and individual clients. Plaintiff believes
8 that the members of the proposed Classes and Sub-Classes number in the
9 thousands. Accordingly, Plaintiff and the Classes satisfy the numerosity
10 requirement of Rule 23.
11

12 83. Class members may be notified of the pendency of this action by
13 mail, published notice, or other appropriate methods.
14

15 **B. Existence and Predominance of Common Questions of Law and Fact -**
16 **Rule 23(a)(2), 23(b)(3)**

17 84. Common questions of law and fact exist as to all members of the
18 Classes and Sub-Classes and predominate over questions affecting only individual
19 Class members. These common legal and factual questions, each of which may also
20 be certified under Rule 23(c)(4), include the following, whether:
21

- 22
- 23 a. Defendants' interest rates paid to Plaintiff and Class members were
24 reasonable;
 - 25 b. Defendants owed fiduciary duties to Plaintiffs and the putative Class
26 members in connection with the Program;
27
28

- c. Defendants breached their fiduciary duties to Plaintiff and the putative Class members in establishing, maintaining, and/or operating the Program;
- d. Defendants' disclosures about the Program contained material misrepresentations or omissions;
- e. Defendants breached their contract with Plaintiff and the putative Class members regarding the Program;
- f. Defendants have been unjustly enriched because of the conduct complained of herein;
- g. Defendants conduct regarding the Bank Deposit Sweep Program violates the UCL;
- h. this case may be maintained as a class action under Fed. R. Civ. P. 23;
- i. to what extent Class members are entitled to damages and other monetary and/or equitable relief; and
- j. and to what extent Class members are entitled to attorneys' fees and costs.

C. Typicality - Rule 23(a)(3)

85. Plaintiff's claims are typical of the claims of the Class because he was a customer of Defendants that had his cash balances improperly managed by Defendants through their administration of the Program. Thus, Plaintiff's claims are typical of the claims of the members of the Class as the claims arise from the same

1 course of conduct by Defendants, and the relief sought within the Class is common
2 to the members of each.

3 **D. Adequacy of Representation - Rule 23(a)(4)**

4 86. Plaintiff will fairly and adequately protect the interests of Class
5 members. Plaintiff has retained counsel competent and experienced in complex class
6 action litigation, and Plaintiff will prosecute this action vigorously. Plaintiff has no
7 interests adverse or antagonistic to those of the Class.
8
9

10 **F. Superiority - Rule 23(b)(3)**

11 87. A class action is superior to all other available means for the fair and
12 efficient adjudication of this controversy. The damages or other financial detriment
13 suffered by individual Class members are small compared with the burden and
14 expense that would be entailed by individual litigation of their claims against
15 Defendants. It would thus be virtually impossible for the Class members, on an
16 individual basis, to obtain effective redress for the wrongs done them.
17
18

19 88. Even if Class members could afford individualized litigation, the court
20 system could not. Individualized litigation would create the danger of inconsistent
21 or contradictory judgments arising from the same set of facts. Individualized
22 litigation would also increase the delay and expense to all parties and the court
23 system from the issues raised by this action. By contrast, the class action device
24 provides the benefits of adjudication of these issues in a single proceeding,
25 economies of scale, and comprehensive supervision by a single court, and presents
26
27
28

1 no unusual management difficulties under the circumstances here.

2 89. Additionally, the Class may be certified under Rule 23(b)(1) and/or
3 (b)(2) because:

- 4
- 5 a. the prosecution of separate actions by individual Class members would
6 create a risk of inconsistent or varying adjudications with respect to
7 individual Class members that would establish incompatible standards of
8 conduct for Defendants;
- 9
- 10 b. the prosecution of separate actions by individual Class members would
11 create a risk of adjudications with respect to them which would, as a
12 practical matter, be dispositive of the interests of other Class members not
13 parties to the adjudications, or substantially impair or impede their ability
14 to protect their interests; and/or
- 15
- 16 c. Defendants have acted or refused to act on grounds generally applicable
17 to the Class, thereby making appropriate final and injunctive relief with
18 respect to the Class members as a whole.
- 19
- 20

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **BREACH OF FIDUCIARY DUTY**

24 **(Asserted on behalf of the Plaintiff and the**
25 **Class and Sub-Class against Defendants)**

26 90. Plaintiff repeats and incorporates by reference the factual allegations
27 in paragraphs 1 through 89, above, as if fully set forth herein.

28 91. At all relevant times, Defendants owed fiduciary duties to Plaintiff and

1 the members of the Classes in connection with the Program. Such duties
2 independently arose out of (1) the agency relationship between Defendants, on one
3 hand, and Plaintiff and the members of the Classes on the other hand, as to the
4 Program; (2) Defendants holding and control over beneficial funds that belonged to
5 its customers, related to their cash sweep balances; (3) Defendants' discretion as to
6 the Program and their customers' cash, while acting as their agent; and/or (4) the
7 applicable industry standards, including Reg BI, FINRA standards, and Defendants'
8 Code of Conduct.
9
10

11 92. As a fiduciary to Plaintiff and the Classes, Defendants owed them the
12 highest duties of loyalty, candor, due care, and prudence in as to the services they
13 provided to them in connection with establishing, maintaining, and/or operating the
14 Program. Moreover, as a fiduciary, Defendants had a continuing duty to act
15 exclusively for the benefit of Plaintiff and the Classes in connection with establishing,
16 maintaining, and/or operating the Program. Lastly, as a fiduciary, Defendants had a
17 continuing duty to obtain informed consent from Plaintiff and the Classes regarding
18 the Program, and specifically make sufficiently detailed disclosures regarding the
19 Program, their role, the role of various related parties, and any conflicts of interest to
20 obtain such informed consent.
21
22

23
24 93. Defendants further owed Plaintiff and the Classes the fiduciary duty
25 to act in good faith in connection with establishing, maintaining, and/or operating
26 the Program.
27

28 94. Defendants further owed Plaintiff and the Classes the duty to charge

1 reasonable fees for their services related to the Bank Deposit Sweep Program.

2 95. Plaintiff and the Classes were fully dependent upon Defendants'
3 ability, skill, knowledge, and goodwill with respect to Defendants' Program.

4 96. Defendants owed Plaintiff and the Classes similar duties by virtue of
5 their control over Defendants' policies or management regarding Program.

7 97. Defendants breached their fiduciary duties by the conduct alleged
8 herein, including by designing, structuring, and/or operating the Program to benefit
9 themselves at the expense of their fiduciary customers, making material
10 misrepresentations and omissions regarding the Program, violating its duty of care,
11 and acting in their own – not their customers' – best interest vis-à-vis the Program.

13 98. Defendants violated their duty of loyalty by, among other things,
14 putting their interest above that of their fiduciary customers, failing to provide
15 sufficient information to their fiduciary customers regarding material features of
16 the Program to obtain informed consent from them, and not properly disclosing
17 their own and their affiliates' role in, and conflicts of interest arising out of the
18 Program, as more fully shown above.

21 99. As a direct and proximate consequence of Defendants' conduct as
22 alleged herein, Plaintiff and the Classes suffered damages in an amount to be
23 determined at trial and seek disgorgement of any undue and unjust gains of
24 Defendants, as well as all other equitable relief deemed just and proper.

27 **SECOND CAUSE OF ACTION**
28 **BREACH OF CONTRACT**

**(Asserted on behalf of the Plaintiff and the
Class and Sub-Class against Defendants)**

100. Plaintiff repeats and incorporates by reference the factual allegations in paragraphs 1 through 89, above, as if fully set forth herein.

101. Defendants' relationship with its customers is governed by a written contract, the terms of which are contained in, and incorporated into various standardized documents drafted by Defendants, including the Brokerage Agreement, Disclosures, and the Roth Agreement.

102. The Brokerage Agreement expressly incorporates the rules of applicable federal, state, and self-regulatory organizations including the SEC and FINRA. As shown above, these rules obligate Defendants to provide "reasonable rates" of interest for each AIMMA and ABISA in the Program.

103. Defendants undertook to act as an agent of the customers regarding all transactions relating to the Program and were thus contractually obligated to obtain for Plaintiff and members of the proposed Classes, through such transactions, rates of return on their cash balances that are reasonable and to otherwise act in their clients' best interests.

104. As set forth herein, the rates of return paid to customers on their cash balances were not reasonable and Defendants did not act in their clients' best interests. Accordingly, Defendants breached their contracts with Plaintiff and the members of the proposed Class.

105. Plaintiff and the members of the proposed Class suffered monetary

1 damages because of Defendants' breach of contract.

2 **THIRD CAUSE OF ACTION**
3 **BREACH OF THE IMPLIED COVENANT**
4 **OF GOOD FAITH AND FAIR DEALING**
5 **(Asserted on behalf of the Plaintiff and the Class and**
6 **the Sub-Classes against Defendants)**

7 106. Plaintiff repeats and incorporates by reference the factual allegations in
8 paragraphs 1 through 89, above, as if fully set forth herein.

9 107. A covenant of good faith and fair dealing is implied into every contract.

10 108. Plaintiff and Class members contracted with Defendants to provide
11 them with financial and/or investment services pursuant to the Brokerage
12 Agreement. Under the Brokerage Agreement, Defendants were agents of Plaintiff
13 and Class members and owed them fiduciary duties, including to act in their best
14 interests. Defendants failed to obtain for Plaintiff and Class members higher and
15 reasonable rates of return on their cash balances and
16

17 109. instead acted in Defendants' own interests. Moreover, under the Broker
18 Agreement, as broker-dealers and pursuant to Reg. BI and 84 Fed. Reg. 134, 17
19 C.F.R. § 276, Defendants had a duty to act in the best interests of Plaintiff and Class
20 members and not put their interests above Plaintiff and Class members.
21

22 110. These contracts were subject to implied covenants of good faith and fair
23 dealing that all parties would act in good faith and with reasonable efforts to perform
24 their contractual duties (both explicit and implied) and not to impair the rights of
25 other parties to receive the rights, benefits, and reasonable expectations under the
26
27
28

1 contracts. These included the covenants that Defendants would act fairly and in good
2 faith in carrying out their contractual obligations to provide Plaintiff and Class
3 member with fair and reasonable rates of return on their cash sweep balances.
4

5 111. Defendants breached these implied covenants of good faith and fair
6 dealing by failing to provide Plaintiff and Class member with fair and reasonable
7 rates of return on their cash sweep balances. Defendants, instead of providing fair
8 and reasonable rates of return on their clients' cash sweep balances, provided far
9 below market rates of return that their clients could have otherwise earned on their
10 cash. Defendants acted dishonestly and failed to exercise and/or abused their
11 discretion in selecting the banks which would hold Plaintiff and Class members'
12 cash balances and in failing to negotiate reasonable rates of interest but instead
13 negotiated higher rates of interest and fees for themselves.
14
15
16

17 112. Plaintiff and Class members fulfilled all the terms and obligations of
18 their contract, including paying for Defendants' services.
19

20 113. Defendants' failure to act in good faith in providing fair and reasonable
21 rates of return on their customers' cash sweep balances denied Plaintiff and Class
22 members the full benefit of their bargain. Plaintiff and Class members received a
23 minimal return on their cash sweep balances that were less than what they could
24 have otherwise earned and less than their reasonable expectations under their
25 contract with Defendants.
26

27 114. As a result of Defendants' breach of the implied covenant of good faith
28

1 and fair dealing, Plaintiff and Class members sustained damages in an amount to be
2 determined by this Court, including interest on all liquidated sums.

3 **FIFTH CAUSE OF ACTION**
4 **UNJUST ENRICHMENT**
5 **(Asserted on behalf of the Plaintiff and**
6 **the Class and Sub-Class against Defendants)**

7 115. Plaintiff repeats and incorporates by reference the factual allegations in
8 paragraphs 1 through 89, above, as if fully set forth herein.

9 116. Because of Defendants' wrongful conduct as alleged herein, Plaintiff
10 and Class members received lower interest payments on their cash sweep balances
11 than they would have in a reasonable and fair market.

12 117. Because of Defendants' wrongful conduct as alleged herein,
13 Defendants unjustly received a benefit at the expense of Plaintiff and Class members
14 in the form of increased interest income that belonged to Plaintiff and Class
15 members.
16

17 118. It would be unjust and inequitable to allow Defendants to retain these
18 wrongfully obtained benefits.
19

20 119. Plaintiff and Class members are entitled to restitution and disgorgement
21 of the benefits unjustly obtained, plus interest, in an amount to be proven at trial.
22

23 **SIXTH CAUSE OF ACTION**
24 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
25 **(Asserted on behalf of the Plaintiff and**
26 **the California Sub-Class against Defendants)**

27 120. Plaintiff repeats and incorporates by reference the factual allegations
28

1 in paragraphs 1 through 89, above, as if fully set forth herein.

2 121. The UCL prohibits, and provides civil remedies for, unfair
3 competition. Its purpose is to protect both consumers and competitors by promoting
4 fair competition in commercial markets for goods and services. In service of that
5 purpose, the Legislature framed the UCL's substantive provisions in broad,
6 sweeping language.
7

8 122. By defining unfair competition to include any "any unlawful, unfair or
9 fraudulent business act or practice," the UCL permits violations of other laws to be
10 treated as unfair competition that is independently actionable, and sweeps within its
11 scope acts and practices not specifically proscribed by any other law.
12

13 123. Defendants' conduct as described herein violates the UCL.
14

15 124. Specifically, Defendants' conduct was not motivated by any business
16 or economic need or rationale. The harm and adverse impact of Defendants'
17 Program was neither outweighed nor justified by any legitimate reasons,
18 justifications, or motives.
19

20 125. The harm to Plaintiff and members of the California Sub-Classes
21 arising from Defendants' unfair practices outweighs the utility, if any, of those
22 practices.
23

24 126. Defendants' conduct was substantially injurious to accountholders in
25 that they have been deprived of fair, market rate interest payments.

26 127. As a result of Defendants' violations of the UCL, Plaintiff and
27 members of the Sub-Classes have paid, and/or will continue to suffer actual damages
28

1 in the form of lost interest.

2 128. Plaintiff alleges that Defendants have, in the course of their business
3 and the course of trade or commerce, undertaken and engaged in unfair business acts
4 and practices by, among other things, engaging in transactions relating to the
5 Program to generate substantial revenue for themselves with their customers' cash
6 and beneficial returns on such cash, while paying their customers only a small
7 fraction of those returns and concealing from such customers the portions of those
8 customers' returns that they directed to and conferred upon their affiliates and the
9 fact that those portions represented the vast majority of such interest. Defendants
10 have further engaged in material misrepresentations and omissions regarding key
11 features of the Program.
12
13

14 129. The deceptive business acts or practices described herein presented a
15 threat and likelihood of harm and deception to Plaintiff and the Sub-Classes in that
16 Defendants has systematically perpetrated the unfair conduct upon members of the
17 public by engaging in the conduct described herein.
18
19

20 130. As a result of Defendants' misrepresentations and omissions of
21 material facts concerning the Program, Plaintiff and the Sub-Classes have suffered
22 an ascertainable loss of money, property, and/or value and were harmed and suffered
23 actual damages.
24

25 131. Had Plaintiff and the Sub-Classes been aware of the Defendants
26 conduct with respect to the transactions relating to the Program, which greatly
27 favored Defendants and their affiliates at their fiduciary customers' expense,
28

1 Plaintiff and the Sub-Classes would not have participated in those investment
2 products or would have done so on different terms.

3 **PRAYER FOR RELIEF**

4
5 Plaintiff requests relief as follows:

- 6 1. Actual damages
7
8 2. Punitive damages
9
10 3. Injunctive relief prohibiting Defendants from continuing to engage
11 in the conduct alleged herein
12
13 4. Attorneys' fees and costs of suit;
14
15 5. Prejudgment interest; and
16
17 6. Such other relief as the Court deems just and proper

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff demands a trial by jury on all claims so triable.

20 Dated: October 14 2024

Respectfully submitted,

21 **EDELSBERG LAW, P.A.**

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